



Planning Services

County Hall, Colliton Park
Dorchester, Dorset, DT1 1XJ

📞 01305 838336- **Development Management**

📞 01305 224289- **Minerals & Waste**

🌐 www.dorsetcouncil.gov.uk

Appropriate Assessment for Application ref: P/OUT/2021/05751

Location: Land at Matchams Stadium
Matchams Lane
St Leonards
BH24 2BU

In accordance with People Over Wind & Sweetman v Coillte Teoranta (Case C-323/17, Dorset Council has concluded that, in the absence of mitigation the above application will have a likely significant effect (LSE) on the following European wildlife sites (including Ramsar sites where relevant), arising from identified impact pathways. This document provides an appropriate assessment to check and confirm that avoidance and mitigation measures can be secured to prevent adverse effects on the integrity of the European sites identified below.

This project level appropriate assessment has been undertaken to check If the adopted:

- Dorset Heathlands Planning Framework 2020 - 2025 SPD
- Nitrogen Reduction in Poole Harbour SPD
- Poole Harbour Recreation 2019-2024– SPD

Provide the necessary measures to prevent adverse effects on site integrity. It is confirmed that adherence to the relevant SPD is applicable to this project proposal.

Designated site	LSE Y/N	Adverse effects caused by:
Dorset Heathlands SPA	Y	The proximity of urban development and its related effects including recreational pressures etc. which arise from this development. The impact of residential development on these sites and the suitability and robustness of avoidance and mitigation measures has already been considered as set out in the adopted Dorset Heathlands Planning Framework 2020-2025 SPD, and its underpinning evidence base and plan level HRA work.
Dorset Heathlands Ramsar	Y	
Dorset Heaths SAC	N	
Dorset Heaths (Purbeck & Wareham) & Studland Dunes SAC	N	
New Forest SPA	Y	The proximity of urban development and its related effects including recreational pressures etc. which arise from this development. The impact of residential development on these sites and the suitability and robustness of avoidance and mitigation measures is considered to mirror that of the Dorset Heathlands Planning Framework 2020-2025 SPD, and its underpinning evidence base and plan level HRA work, given the similarity in impact pathways between the designated sites.
New Forest Ramsar	Y	
Poole Harbour SPA	N	Nutrient enrichment arising from within the harbour catchment from a number of sources acting in combination, including that arising from the increasing
Poole Harbour Ramsar	N	

		<p>population related to additional residential developments, the proposal requires measures to avoid and mitigate the effects. The impact of residential development on these sites and the suitability and robustness of avoidance and mitigation measures has already been considered and are set out in the adopted Nitrogen Reduction in Poole Harbour SPD January 2017, and its underpinning evidence base and plan level HRA work.</p> <p>Some recreational activities (including dog walking, cycling and water sports) around Poole Harbour are creating disturbance to wading birds and adversely affecting the estuarine habitat. The intensification of development around the harbour is likely to contribute to an increase in population and contribute to greater recreational pressure. The Poole Harbour Recreation SPD sets out a strategy under which planning applications for residential development can avoid adverse effects on the integrity of Poole Harbour.</p>
River Avon SAC	Y	<p>Increasing urban runoff in the River Avon catchment and hence increasing the phosphorus loads within the River Avon SAC, which in combination with other plans or projects is likely to have adverse impact on riparian habitats and species.</p>

Designated site affected	Confirmation that adverse effects on integrity are avoided for <u>all</u> features with avoidance/mitigation secured by adherence to the SPD Y/N
Dorset Heathlands SPA	N
Dorset Heathlands Ramsar	N
Dorset Heaths SAC	N/A
Dorset Heaths (Purbeck & Wareham) & Studland Dunes SAC	N/A
New Forest SPA	N
New Forest Ramsar	N
Poole Harbour SPA	N/A
Poole Harbour Ramsar	N/A
River Avon SAC	N

Having concluded that the application will have a likely significant effect in the absence of avoidance and mitigation measures on the above European sites, this document represents the Appropriate Assessment undertaken by Dorset Council as Competent Authority in accordance

with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Article 6 (3) of the Habitats Directive and having due regard to its duties under Section 40(1) of the NERC Act 2006 to the purpose of conserving biodiversity. Consideration of Ramsar site/s is a matter of government policy set out in the National Planning Policy Framework 2019.

The authority has concluded that the likely significant effects arising from the proposal are wholly consistent with and inclusive of the effects detailed in the supporting policy documents, and that the proposal is wholly compliant with the necessary measures to prevent adverse effects on site integrity detailed within the documents:

Dorset Heathlands Planning Framework SPD	No
Nitrogen Reduction in Poole Harbour SPD	N/A
Poole Harbour Recreation SPD	N/A

These documents and the avoidance/mitigation measures set out are supported by an extensive and tested evidence base which has been scrutinised at various levels from planning appeals, through the appropriate public consultation process and is supported by Habitats Regulations Assessments prepared for Examination in Public whilst drawing up the current adopted Local Plan.

Further assessment

Proposal

The application is for a Continuing Care Village (CCV) comprising purpose-built specialist accommodation, including up to 330 extra-care and a care home of up to 60 beds. The proposal site is located adjoining the boundary, and partially within, the St Leonards and St Ives Heaths Site of Special Scientific Interest (SSSI). The SSSI is also a part of the Dorset Heathlands Special Protection Area (SPA) on account of rare or vulnerable heathland bird species such as nightjar and Dartford warbler. It is also part of the Dorset Heaths Special Area of Conservation (SAC) which is notified for its vulnerable heathland and associated habitats, and some individual species such as sand lizard and smooth snake.

The proposal includes a 31.9ha Nature Conservation Area (NCA) which will include habitats to be restored, enhanced and managed in perpetuity. It is intended that the creation of the NCA provides a means to improvement of the status of SSSI within the site, which is currently in an unfavourable condition.

A Shadow HRA has been submitted in support of the application which suggests that the proposal will not have a significant impact on the Dorset Heathlands.

Care Home

With regard to specialist housing comprising a nursing home for the frail elderly, the Dorset Heathlands SPD states that: '*Certain types of specialist purpose built nursing homes where residents are no longer active will not have a significant effect and do not need to provide mitigation, e.g. where nursing care is necessary such as for advanced dementia or physical nursing needs.*' Such schemes are not required to provide mitigation as the nature of the residents is such that they will not be expected to leave the property to access heathland.

Thus, the likely significant effects arising from the care home element of the CCV could be mitigated by: preventing the scheme from becoming open market housing; ensuring that residents are limited to the frail elderly; preventing any live-in accommodation for staff; preventing the use of any car parking by the general public; and a pet covenant.

Extra-care dwellings

With regard to specialist housing comparing extra-care dwellings, the nature of the proposal and draft Heads of Terms provides that a range from low – high levels of care would be available to residents as required. The minimum level of care a resident would need to require to be considered a Qualifying Person (and thus eligible for residency of an extra-care dwelling) set out in the draft Heads of Terms is 2 hours per week. A Qualifying Person would also need to be over 65 years of age. Residents would be able to benefit from varying levels of care as time progresses however a person in need of the minimum level of care only is unlikely to be severely restricted by illness or mobility.

The view of the Local Planning Authority is that the proposed extra-care dwellings fall within Use Class C3 (residential) rather than Use Class C2 (residential institutions) due to the level and nature of the care proposed. However, in regard to this Appropriate Assessment the use class is of limited relevance. This is because the Dorset Heathlands SPD states that with regard to extra-care dwellings: *'Assisted living or extra care housing, where the occupants are still active, is comparable to residential flats. Such schemes are not permissible within the 400 metre heathland area.'*

Thus, the extra-care element of this proposal is of a type that, within 400 metres of the designated sites covered by the Dorset Heathlands Planning SPD (2021-2025), falls within the 'not permitted' category of the Dorset Heathlands SPD.

The SPD has added force because a primary purpose is to prevent adverse effects on designated heathland sites from the cumulative impacts of urban development and by so doing, meet the statutory 'in combination' test of the Habitat Regulations. It follows that urban development proposals that are not compliant with the avoidance and mitigation strategy of this SPD will breach the Habitat Regulations requirement. In order to demonstrate that a proposal which is contrary to the SPD would not have an in-combination effect, the effects of that development alone would need to be demonstrated as zero, rather than merely insignificant, and this is an extremely high bar.

Nature Conservation Area (NCA)

The Site includes parts of St Leonards and St Ives Heaths SSSI and the overarching Dorset Heath(land)s SAC and SPA. The relevant SSSI units (18 and 29) are in unfavourable, declining condition. Management of the site to date has contributed to this unfavourable rating. The proposal could provide a route through which long-term management could be improved, with this secured through planning obligations/conditions.

Table 5.1 within the Shadow HRA sets out the areas designated as SSSI proposed to change as part of the improvement management. This shows 6.3ha of 'other coniferous woodland' and 0.3ha 'rhododendron scrub' replaced with 5.1ha 'Lowland Heathland' and 1.4ha 'other woodland, mixed'. There are statutory mechanisms available to achieve a similar result however these have not been successfully enacted to date and it is considered unlikely that management will change significantly while the current use remains operational on the site.

The new management regime, and the proposed NCA when considered in isolation, would have a positive impact. However, although there may be positive impacts, there is insufficient evidence available to quantify these. Thus there is a lack of certainty over their magnitude and it is likely that any positive impacts are reduced by use of the NCA for recreation.

Consideration of submitted Technical Appendix 11.12L Information for Habitats Regulations Assessment (HRA)

A Shadow HRA has been submitted by the applicant which provides an assessment of the potential effects of the development on international sites. This takes into consideration effects arising in relation to: habitat management (including of the large Nature Conservation Area (NCA) proposed within the site); Habitat loss or damage; loss of offsite supporting habitat; noise; hydrological change; air pollution; cat predation; recreational pressure; and other urban effects.

The submitted information emphasises the references to 'case by case' assessment in the SPD. However, the SPD refers to 'case by case' only with regard to specific aspects of an application and how they meet the criteria of the SPD (such as what is the precise use class in relation to the use class definitions within the SPD) rather than having a general 'case by case' approach. Such an approach would undermine the purpose of the SPD.

Proposed Mitigation

The large number of potential impact pathways that would need to be addressed as part of this appraisal illustrates the high dependence of the application on a large and detailed mitigation package. In some instances, it is difficult to judge the effectiveness of proposed mitigation measures because the detail and certainty of implementation required are not available.

Some mitigation packages, such as car park management; care home restrictions, publicly accessible Sustainable Alternative Natural Greenspaces (SANGs) and Construction and Environmental Management Plans (CEMP), have been used extensively to provide mitigation across the Dorset Heathlands area. As such the level of mitigation that would need to be secured, the likelihood that this can be successfully secured, and the impacts of these measures, are readily understood. Such mitigation measures could be readily included within an Appropriate Assessment, with details to be finalised later.

Some forms of mitigation proposed in this instance, such as fencing, and greenspaces that do not benefit from public access such as the proposed Alternative Natural Greenspace (ANG), have not previously formed part of the mitigation strategy within the Dorset Heathlands area. Others, such as pet covenants and lighting strategies, have formed part of mitigation strategies but in the context of a different development typology. This does not mean that these measures cannot be considered, however there is less certainty regarding their effectiveness.

Direct Access to Dorset Heaths

To demonstrate that direct access to adjacent and on-site designated areas can be prevented, a boundary treatment strategy for the NCA and ANG has been submitted (Map 10).

This shows the Dorset Heaths adjoining the site to the south-east separated by the existing bank, ditch, post & barbed wire fence. It is considered that access onto this area of the Dorset Heaths could be considered desirable by residents / visitors using the ANG who wish to extend their walk on this open access land.

A 1.5m weldmesh fence would provide a boundary between the ANG and direct access to designated areas within the site, as well as to the Avon Valley Country Park to the north. Again, it is considered that access onto these areas to extend walks or access the Country Park would be desirable.

A standard height post & wire/top rail fence would separate the ANG from the NCA to the west. These would be bolstered through natural barriers, to include vegetation and topography. Levels within this area would remain as existing. It is noted that while there are some existing levels changes and areas of vegetation these are not consistent along the ANG boundary. There is uncertainty regarding the short- and long-term effectiveness of vegetation as a barrier, particularly

given the ecological aim of restoration of habitat through removal of inappropriate vegetation. Again, it is considered that access those parts of the NCA which fall outside of the designated areas would be desirable.

No information is provided regarding boundary treatments to the south-west and western boundaries where the NCA adjoins the Dorset Heathlands. The areas adjoined are in private ownership and as such access is less likely to be desirable.

In general, the degree to which proposed barriers between the NCA and the adjacent designated heathland would be effective in preventing access, particularly in perpetuity, is uncertain. Some adjacent heathland is open access land which means that barriers to access on the boundary are not permissible and that heathland managers of adjacent land would have no means of redress if at any point direct access was established.

In particular, the northern boundary of the site adjoins the Avon Valley Country Park which forms part of the designated area. It is reasonable to assume that those residents who are active will want to access the Country Park and the walking routes and facilities it offers. It is likely this will result in pressure to create a direct access or bypass any fence that is erected to prevent this.

Vehicular trips to Dorset Heaths and New Forest

The site is in an extremely sensitive location generally, because there is easy car access to several Dorset Heathland and New Forest sites. It is less than 5 minutes to car parks at Hurn Forest and Avon Heath South Park, and less than 15 minutes to the New Forest. In these circumstances, even outside of the 400m zone, the requirement for a Suitable Alternative Greenspace (SANG) would be particularly stringent because of the attractiveness of nearby sites. Such a SANG would need to attract sufficient existing visitors to counteract the inevitable increase in visitors from the development.

In these circumstances it is important to be able to make a good prediction of the potential increase in recreational pressure that the proposal would generate. But the evaluation of this issue in the Shadow HRA is flawed. It first uses the estimate of Panter and Caals (2020) that the average heath visitor makes 206 visits per year. However, new residents at this development would not necessarily be 'average visitors' since they would live in a location with such easy access to heathland; visitor surveys consistently show that ease of access is a key determinant of the frequency of heath visits. The Shadow HRA then claims that because only 27% of visitors at Avon Heath Country Park were over 65, visits from the development will be only 27% of the initial 206 visits per year estimate of the average visitor. But of course, the proportion of visitors over 65 is dependent on the proportion of over 65s in the general population, it cannot be taken to mean that over 65s visit heathland so much less than the average visitor. Indeed, it is reasonable to conclude that retired individuals with more time available will be more likely to visit local heathlands than younger age groups.

The degree of impact from these additional heathland visits depends greatly on the effectiveness of the proposed covenant requiring no dogs. However, it cannot be assumed that heathland visitors without dogs are totally without negative consequences. Because a majority of heathland visitors come with dogs it is difficult to separate any negative effects that may result from visitors without dogs. The evidence that dogs rather than walkers are the main instrument of negative impact comes mainly from evaluation of potential mechanisms of effects on ground nesting birds and whilst this indicates that dogs are likely to have a greater negative effect it does not follow that there will not be an impact from people without dogs.

Regarding assumptions around arson and fire-starting, it is considered reasonable to assume that over 65s are less likely to cause fires through arson. However, significant heathland fires

have been caused inadvertently through the careless use of disposable BBQs, while littering may also increase risk. It is considered reasonable to assume that over-65s are as likely to use disposable BBQs as other age groups.

The Dorset Heathlands SPD is underpinned by a substantial evidence base and has provided the basis for mitigation across the area. The mitigation strategy within the SPD has been considered to demonstrate mitigation of impacts on New Forest sites also, due to the similarities in impact pathways. The departures and extrapolations from this evidence base proposed within the Shadow HRA are fundamentally flawed and cannot not provide confidence regarding predicted vehicular trips to the Dorset Heaths or New Forest.

Considering the “ANG” proposed for this development, because of its position this is not designed or able to attract any existing heathland users, and therefore cannot be relied on to prevent further increases in recreational activity to these sensitive sites. Considering vehicular trips in isolation, to demonstrate zero impacts arising from this proposal (and prevent an in-combination effect), there would need to be certainty that residents or visitors to the development would never make any visits to the nearby Dorset Heathland and New Forest sites. It is considered that this cannot be demonstrated.

Consideration of further mitigation measures with regard to access to Dorset Heathlands/New Forest

The above assessment makes assumptions regarding mitigation based on the information submitted by the applicant. In particular, the assumption that the extra-care units would be occupied by Qualifying Persons aged over-65 and with care needs at a minimum of 2 hours per week. It is not unusual for the minimum level of care required at extra-care developments to be higher than 2 hours per week – examples exist of minimum care needs of 4 hours. In addition, it is possible that the age limit for Qualifying Persons could be increased to 75 years.

It is not considered that such measures would significantly alter the above assessment. A development with these mitigation measures in place would continue to be contrary to the Dorset Heathlands SPD. It is reasonable to assume that in any extra-care facility of this nature there would be persons resident who would be active enough to access designated sites, either on foot or by car. There is no level of mitigation which would be sufficient to provide certainty regarding impacts arising from a development of the type proposed.

Pet covenant

It is clear that a pet covenant restricting ownership of dogs and cats is a crucial element of the proposed mitigation, as without it, it would be certain that the scheme would be harmful to the heathland interests. Pet covenants are successfully utilised as mitigation for potential effects arising from nursing homes within 400m of the heathlands. Care homes where the frail elderly are cared for usually comprise a single (or small number of) block(s), and occupants pay fees without acquiring an interest in the property. Movements are controlled and there is a high level of surveillance due to the nature of the care needs of residents. There is less certainty regarding the effectiveness of such covenants on a scheme of this size where housing typologies are potentially akin to that of a typical bungalow or house, and would be owner-occupied.

Natural England have raised concerns regarding the risks where an effective covenant is so essential, but likely to be contrary to the wishes (and potential rights) of many residents. It is considered reasonable to assume this approach is likely to set up a long-term source of friction between residents and authorities, and that this has the potential to discredit heathland mitigation measures in general. Such covenants may also be vulnerable to future legal challenge which reduces certainty regarding the effectiveness of the mitigation.

Lighting

The proposals will introduce increase lighting and noise to the locality which may harm designated wildlife interests. While the current use includes lighting this is on an ad-hoc basis with significant periods where the site, and therefore lighting, is not in use. It is also noted that parts of the area proposed for built development are currently unlit.

The use of external lighting strategies can deliver successful mitigation in certain circumstances. However, in this instance the development would be located with dwellings situated only 20m away from the designated areas. An external lighting strategy could not fully mitigate impacts as these would also arise from internal windows, for which mitigation cannot be secured.

Noise

The proposals will introduce increase lighting and noise to the locality which may harm designated wildlife interests. It is noted that the submitted evidence regarding the baseline for noise was undertaken during a busy period for the current use, and so this cannot provide certainty regarding the baseline noise levels during the significant quieter periods. While levels of noise within the development can be assumed to be lower on an average day than that of the current use on an event day, it is likely that the overall impact would be an increase in day-to-day background noise. There is insufficient evidence to demonstrate that negative impacts would not arise from the change in noise profile.

Fire Risk

Heathland fires are considered likely to increase in frequency and intensity with climate change. Such fires can pose a significant risk to local properties and residents. The proposal's 20 m buffer between the developed areas to heathland habitats would provide no or very minimal protection from a heathland fire. Such fire risks or the perception of such risks would be likely to lead to demands from the future residents and owners of the development for heathland management to reduce the risk to their properties. Such management would be extremely difficult to resist, may compromise the conservation objectives for the designated sites and NCA and would add costs and risks for site managers.

Nature Conservation Area

The Shadow HRA identifies land within the application site as supporting habitat to the adjacent designated sites. Such land is considered functionally linked to the designated sites as it helps support the same birds (woodlark and nightjar) and rare reptile (sand lizard) populations for which the sites are designated. Whilst some areas of the supporting habitat would be lost to the proposed development this does not necessarily mean that there is an adverse effect on the designated site provided that their functionality in relation to these sites is maintained through replacement or enhancement of the retained functionally linked habitats.

Here the NCA proposed, with associated management, might have the capacity to achieve this objective but its functionality is likely to be compromised because a significant proportion of the area is also designed to absorb the recreational impacts of the proposed development and will therefore itself suffer from the adverse impacts associated with recreational activity. Given the dual purpose of the NCA it is difficult to assess and therefore uncertain whether recreational use would reduce the NCA's ability to fully maintain its ecological function in relation to the neighbouring designated sites.

River Avon SAC

The site lies partly within the River Avon catchment where, in the absence of mitigation, additional wastewater and urban run-off would contribute to nutrient loading. This would result in adverse impacts on riparian habitats and the River Avon SAC.

A Nutrient Assessment has been submitted which states that the foul sewage from the scheme will be discharged to the Palmerston Waste Water Treatment Works (WWTW) which drains into the River Stour catchment. The connection could be conditioned, which would provide certainty that foul sewage would not contribute to an increase in phosphates in the River Avon.

The proposal will increase urban runoff in the River Avon catchment. CIRIA guidance advises that urban runoff that infiltrates to ground is considered to be removed from the water environment and consequently incurs no nutrient mitigation liability. The submitted surface water drainage strategy proposes that all urban runoff infiltrate to ground, with no export to the broader surface water environment within the catchment of the River Avon SAC. Natural England have advised that this approach would be satisfactory in principle and mitigation could be conditioned.

However, the Lead Local Flood Authority have raised concerns that the proposed surface water drainage strategy is not supported by sufficient information to demonstrate that it can be viably implemented. Their concerns do not relate specifically to this Appropriate Assessment however if the scheme cannot be implemented it may be necessary to discharge water to a watercourse or sewer. While these concerns remain there is insufficient certainty

The submitted Nutrient Assessment has demonstrated that the scheme could achieve phosphorus neutrality with respect to the River Avon SAC. Natural England have advised that pre-commencement conditions could ensure requirement mitigation measures are in place. With the required conditions in place, adverse effects on the River Avon SAC could be avoided/mitigated.

Conclusion

This above assessment has highlighted the large degree of uncertainty that remains in the prediction of the potential impacts arising from this development.

There are a significant number of potential impact mechanisms that would result. Some impacts would be small, for others there is significant uncertainty as to the scale of effect. However, what is relatively clear is that there would be a substantial increase in visitor numbers on nearby designated heathland sites. This is very likely to cause significant adverse impacts.

There are potential positive impacts resulting from improvement to management of the designated areas on site along with adjacent land to be included in the NCA, although these are reduced due to the use of the NCA for recreation, and the proximity of development to these areas. There is a lack of certainty regarding the magnitude of any positive impacts.

The proposal is contrary to the Dorset Heathlands SPD which provides a strategic and evidence-based approach to mitigating in-combination effects across Dorset. To justify a departure from this, there would need to be clear evidence that the potential benefits of this particular proposal are of a magnitude and certainty that clearly outweigh the adverse effects that would arise.

The relevant Habitats Regulation test is not against each individual effect from separate pathways but against the effect of the entire development, both alone and in combination with other plans and projects. Given the above analysis it is our considered that an adverse effect on the integrity of the Dorset Heaths SAC, Dorset Heathlands SPA, New Forest SPA and New Forest Ramsar cannot be ruled out.

It cannot therefore be concluded that there will be no adverse effect on the integrity of the designated sites identified above.

Signed.....